

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**D.T.E. 04-116**

**Investigation by the Department of Telecommunications and Energy  
Regarding the Service Quality Guidelines Established in  
Service Quality Standards for Electric Distribution Companies and  
Local Gas Distribution Companies, D.T.E. 99-84 (2001)**

**Initial Comments of The Berkshire Gas Company**

**March 1, 2005**

**I. OVERVIEW**

In D.T.E. 04-116, issued December 13, 2004 (the “Order”), the Department of Telecommunications and Energy (the “Department” or “D.T.E.”) solicited comments regarding its investigation and proposed changes to the existing service quality (“SQ”) guidelines (the “Guidelines”) established in D.T.E. 99-84 that are included in performance-based regulation (“PBR”) plans for gas and electric distribution companies (“LDCs”) pursuant to G.L. c. 164 § 1E (“Section 1E”). The Berkshire Gas Company (“Berkshire” or the “Company”) appreciates the opportunity to offer comments on this issue and to assist the Department in evaluating the merits of maintaining the existing SQ Guidelines. The Company has long been committed to providing outstanding service to its valued customers while making safety the cornerstone of its business. The fact that the Company has met all relevant SQ benchmarks since the implementation of the Guidelines is evidence of this commitment.

In a Letter Order dated April 17, 2002 (the “April 17<sup>th</sup> Order”), the Department approved the Company’s SQ plan and designated an effective date of January 1, 2002, a date proximate to the implementation of the Company’s PBR rate plan.<sup>1</sup> Based upon the findings in D.T.E. 99-84, the Department has previously noted its intention to conduct a follow-up investigation to review the Guidelines and the LDCs’ SQ plans at the end of a three-year term. In this proceeding, the Department solicited comments on the following topics: (1) Penalty Offsets;

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<sup>1</sup> The Company’s Price Cap Mechanism (“PCM”) Plan was approved on January 31, 2002 in docket D.T.E. 01-56.

(2) Odor Calls; (3) Staffing Levels; (4) Standardization of SQ Performance Benchmarks; (5) SQ Incentives; (6) Customer Service Guarantees; (7) Property Damage; (8) Line Loss; (9) Double Poles; and (10) SAIDI/SAIFI. The Company will address the natural gas-related topics, (1) through (7).

## II. **REGULATORY BACKGROUND**

On October 29, 1999, the Department instituted a Notice of Inquiry/Generic Proceeding to develop SQ standards and revenue penalties to be included in PBR plans for electric and gas distribution companies pursuant to Section 1E. The statutory requirement to establish SQ standards and penalties ensures that, under PBR, the incentive to cut costs would not result in a degradation of the quality of customer service or safety. More specifically, Section 1E provides the authority for the Department to levy penalties against a utility that fails to meet specified SQ standards while operating under a PBR plan. Such standards are presumably designed to remove the financial incentive to reduce costs during the term of the relevant utility's PBR plan.

The Department issued questions and solicited two rounds of comments regarding SQ performance benchmarks, SQ categories and measures, and penalties in docket D.T.E. 99-84. Then, on August 17, 2000, the Department issued an Interim Order (the "Interim Order") proposing SQ standards and penalties to be included in PBR plans. Specifically, the Interim Order established: (1) performance measures for customer service and billing, customer satisfaction, safety, and reliability; (2) benchmarks for each category, which, with few exceptions, are based on the historical performance of each specific gas and electric utility's individual performance; and (3) a penalty formula for each category. In addition, the Interim Order solicited further comments regarding standardization in determining benchmarks, customer surveys, and the allocation of penalties. A Technical Session was also conducted to consider these issues. In response to the Department's request, Joint Comments were submitted on behalf of the LDCs on November 9, 2000 requesting, among other things, that the

Department establish performance measurement criteria that are consistent with the standards and criteria currently maintained by each of the LDCs. The Joint Comments also sought to establish appropriate monetary penalties that are assessed to LDCs only in the event of an actual degradation in service quality. Further, on April 4, 2001, the Department sought follow-up comments on several specific questions regarding: (1) the penalty mechanism; (2) individual customer protection mechanisms; (3) a restricted work-day reporting requirement; (4) a property loss damage reporting requirement; and (5) technological changes. In response, on May 24, 2001 Joint Comments were again submitted on behalf of the LDCs.

Subsequently, on June 29, 2001 (the “June 29<sup>th</sup> Order”) the Department issued an Order addressing the remaining issues and put forth the final guidelines on SQ categories and measures as well as penalties, including customer service guarantees and penalty offsets. The June 29<sup>th</sup> Order also directed each gas and electric distribution company that files for a general rate increase to include a PBR plan containing the SQ measures developed in the D.T.E. 99-84 proceedings, and to begin collecting, as of the date of the June 29<sup>th</sup> Order, all the data necessary to implement an SQ plan based on these guidelines. On July 19, 2001 the LDCs filed a Motion for Clarification of the June 29<sup>th</sup> Order with regard to: (1) penalty offsets; and (2) customer-service guarantees. On September 28, 2001, the Department ruled on the Motion for Clarification, granting that: (1) superior performances in other SQ measures cannot be used to offset a deficient performance in responding to odor calls; however, a superior performance in odor calls can be used as an offset for deficient performance in other SQ measures; (2) payments made under a customer service guarantee program in a previous year may be subtracted from the maximum level of revenue penalty; and (3) distribution companies must submit SQ plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997, except as provided by collective bargaining agreements or other statutory provisions.

On July 17, 2001 Berkshire filed a general rate case, docketed as D.T.E. 01-56, which included a PBR plan. The Company submitted a Service Quality Plan consistent with the requirements of D.T.E. 99-84 in its rate proceeding. On January 31, 2002, the Department issued an Order approving a base rate increase and the Company's PBR plan. Then, in a Letter Order in D.T.E. 99-84 dated April 17, 2002, the Department addressed the implementation of the Company's SQ plan, including its effective date. "Addressing Berkshire first, we determine that its SQ plan, including penalties, will be effective January 1, 2002, a date proximate to the implementation of its PBR." April 17, 2002 Letter Order in D.T.E. 99-84, at 3. Subsequently, on March 1, 2002, the Company submitted its first annual Service Quality Report covering the 2001 period and described benchmarks for 2002. Next, on March 3, 2003, the Company filed its Service Quality Report covering the period 2002, docketed as D.T.E. 03-11, which was approved on September 30, 2003. Finally, on March 1, 2004, the Company filed its Service Quality Report covering the period 2003, docketed as D.T.E. 04-13, which was approved in a letter dated October 22, 2004. The Company expects to file its Service Quality Report for 2004 on March 1, 2005 in a proceeding docketed as D.T.E. 05-13.

### III. **CHANGES TO BERKSHIRE'S APPROVED PCM PLAN ARE NOT APPROPRIATE**

As a general matter, Berkshire submits that the current Guidelines provide appropriate incentives to preserve its levels of service quality and should be maintained. Berkshire notes that its Price-Cap Mechanism Plan ("PCM Plan"), the PBR Plan approved in docket D.T.E. 01-56, was undertaken with the understanding and expectation as to the Department's SQ requirements. The Company believes any departure from these standards could amount to "recontracting," a practice that threatens the viability of incentives structured pursuant to the PCM Plan. As the Company's expert witness in its PBR case, Dr. Kenneth Gordon, noted a PBR Plan "is far more likely to provide strong efficiency incentives if the utility has a strong assurance that stakeholders and regulators will honor the terms of the [rate plan]." Testimony of

Dr. K. Gordon, D.T.S. 01-56, p. 16.<sup>2</sup> Berkshire submits that extensive changes to the SQ structure could threaten the viability and underlying incentives of the PCM Plan and would be inconsistent with the obligation of reasoned consistency in Department decisions. Moreover, the further ratcheting of SQ requirements is not appropriate and could necessitate corresponding changes to Berkshire's overall rate plan structure, an outcome that weakens the incentives built into the PCM Plan and adds a substantial administrative burden for the Company and its stakeholders. Accordingly, as a general matter, the Company respectfully submits that the Department should essentially maintain the well-established SQ Guidelines, at least with respect to Berkshire for the remaining term of the approved PCM Plan. As reflected in the responses to the Department's inquiries below, Berkshire does not object to symmetrical SQ performance structures when implemented as part of an overall rate plan, although in the case of Berkshire this should not occur until after its current PCM plan expires. Further, Berkshire strongly believes that incentive opportunities should not be a component of cost recovery but, rather, should be limited to a reward for exceptional performance with respect to an identified measure. In any event, the Company appreciates the opportunity to provide comments on this important matter in these comments and the reply comments due on April 5, 2005.

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<sup>2</sup> Dr. Gordon's rate case prepared testimony explained some of the problems with interim changes to a single aspect of a comprehensive rate plan:

The value and credibility of regulatory commitment plays a crucial role in determining the intensity of the efficiency incentives that an alternative rate plan would present to a regulated firm. While the commitment powers of regulators are limited, the plan should at least be designed to put significant constraints on the ability of future regulators to act opportunistically. See Brian Levy and Pablo T. Spiller, *Regulations, Institutions, and Commitment* (Cambridge: Cambridge Univ. Press, 1996), pp. 1-35. This is important in order to provide the utility with the maximum feasible assurance that the incentives provided under Berkshire's PCM will continue throughout the term of the plan.

Testimony of Dr. K. Gordon, D.T.S. 01-56, p.16, n. 11.

#### IV. **RESPONSE TO D.T.E. INQUIRIES**

1. **Offsets:** *Currently, if an LDC incurs a potential penalty for substandard performance in a penalty provision measure, the Guidelines allow that LDC to offset that penalty if the LDC exceeded its benchmark in other penalty provisions. Please discuss whether the offset provision offers an incentive for an LDC to improve SQ and whether the use of penalty offsets should be continued in the future Guidelines.*

The Company submits that the offset feature provides an incentive for an LDC to improve service quality and should be continued in future Guidelines. There are several purposes served by the offset feature. First, there are instances where the utility may be in a penalty position on a particular measure as a result of one-time operational changes or other singular events that are not necessarily outside the utility's control, but are also not the result of or indicative of service degradations. For example, a change in practice to be more aggressive on the collection of overdue customer accounts may result in a marked increase in customer calls that ultimately results in reported annual performance beyond the deadband threshold. The offset provision gives the utility the incentive to work to increase service on other measures to mitigate the effect of this one-time operational change. Moreover, the offset provision may act to eliminate a disincentive to pursue an appropriate practice that could result in a penalty. For instance, in the example above involving more aggressive practices on collection, this appropriate activity might not be pursued if offsets were not available.

In addition, the offset provision may be effective in signaling above-average performance to employees, customers, shareholders and the Department. In fact, Berkshire utilizes the service-quality requirements to set internal goals for improved company performance and as a result, service-quality targets are communicated throughout the Company. Utilities are able to provide verifiable and objective information to customers (and the Department) on both the successes and challenges they face in providing service to customers. In sum, the offset system serves an important function and should be continued in future Guidelines.

With regard to the second part of the Department's question, the Company contends that the use of penalty offsets should be continued in future Guidelines. In its June 29<sup>th</sup> Order,

the Department linked the inclusion of the offset provision to concerns regarding the accuracy of the deadband calculation. The Department noted the “statistical probability that the standard deviation approach will result in a 16 to 18 percent chance of Type I errors,” in light of the limited available data. D.T.E. 99-84 (2001), at 27-28.<sup>3</sup> Accordingly, the Department found that:

In order to provide an additional safeguard against the probability of a company being subject to a SQ penalty for random variations in performance, the Department shall incorporate an “offset” feature to the penalty mechanism. . . . The Department considers a standard deviation approach that includes a system of monetary offset credits best achieves our goal of balancing the risk of Type I errors with the risk of Type 2 errors.<sup>4</sup>

June 29<sup>th</sup> Order, at 28. With only three additional data points available since the conclusion of the D.T.E. 99-84 proceeding, the concerns over the accuracy of the deadband calculation have not been abated. That is to say, the concerns regarding the mathematical underpinnings of the standard-deviation calculation used to establish the performance deadbands have not fundamentally diminished and, therefore, the need for this “safeguard” remains in terms of future Guidelines. Accordingly, the Department’s rationale for adopting an offset mechanism in D.T.E. 99-84 continues to apply in 2005 – and for the foreseeable future.

Lastly, the offset component serves an important function in counterbalancing an idiosyncrasy of the Department’s benchmark system. Specifically, an issue may arise under the Department’s current benchmark system because the historical average and standard deviation for benchmarking are based on a specified ten years of data. If a utility has 10 years of data available for a particular measure, the benchmark is fixed for the “duration of the PBR.” Service Quality Guidelines at Section I.C. However, if the utility has less than 10 years of annual data available, new performance data is rolled into the historical average on a year-to-year basis until such time that 10 data points are incorporated into the benchmark. Id. The dynamic that occurs with the continual incorporation of new performance data is that the benchmark may be raised

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<sup>3</sup> “Type 1” errors occur when a utility is penalized for deviation from a historical benchmark that is the result of random variation in the data rather than an actual deterioration in the service quality performance of the utility.

<sup>4</sup> A “Type 2” error occurs when a degradation of service occurs but goes undetected and un-penalized. D.T.E. 99-84, at 27, fn. 24.

above historical levels in circumstances where the utility has greatly improved its service after the commencement of the SQ Plan. With an ever-increasing benchmark, there is the potential that a utility could be penalized for service that falls below the new deadband threshold but, in fact, is at a level that exceeds the level of service provided to customers at the outset of the PBR Plan.<sup>5</sup> Thus, a utility operating under a PBR Plan could be subject to a penalty despite the fact that performance under that measure has actually improved since the adoption of the PBR plan.<sup>6</sup> In light of this issue, the offset component of the penalty becomes important because it provides an opportunity for the utility to offset penalties that may result from this dynamic with improved performance on other measures.

For all of these reasons, the Company submits that the penalty offset should be maintained in future Guidelines.

2. **Odor Calls:** *Currently, the benchmark for odor calls is 95 percent, which is an obtainable goal of all gas LDCs. Please discuss whether this benchmark should be strengthened in the future Guidelines and SQ plans and whether multiple calls regarding a single gas leak should be considered as a single odor call response.*

The Company submits that the benchmark for odor calls should remain at the 95 percent level in any future Guidelines. In the June 29<sup>th</sup> Order, the Department stated that “public safety concerns make it essential for gas distribution companies to achieve and maintain a high performance standard for odor call response times.” June 29<sup>th</sup> Order, at 39. Berkshire emphatically agrees with the Department’s assessment of the importance of high performance with regard to odor call response times and puts forward that there is no higher priority for the gas utility than responding to odor calls as quickly as possible. As demonstrated by the performance statistics reported over the past three years, Berkshire has been extremely diligent in its efforts to respond to gas odor calls as quickly as possible, and as a result has consistently exceeded the 99 percent level for performance under this benchmark. There has been no

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<sup>5</sup> Once the 10-year threshold is reached and the benchmarks are fixed, this should not continue to be an issue.

<sup>6</sup> Indeed, Berkshire’s performance on several measures where benchmarks have not been established has improved from year to year.

instance where the utility's response to an odor call has resulted in a gas incident causing personal injury or harm to property. In fact, if anything, Berkshire's performance suggests that the 95 percent benchmark and related reporting has achieved the precise objective that the Department identified in initiating the service-quality program. Accordingly, no change to the standard is necessary or warranted in future Guidelines.

In any event, the Department should remain mindful that SQ standards were established to ensure that under PBR, the incentive to cut costs would not result in a degradation of the quality of customer service or safety; the fact that a particular service-quality goal is "obtainable" is not alone a basis for setting a higher performance benchmark. In D.T.E. 01-56, Dr. Kenneth Gordon provided his expert opinion with regard to the issue of maintaining service quality in his evaluation of the Company's proposed, and subsequently approved, PCM Plan. In response to a question regarding the purpose of the penalty mechanism in a PCM Plan, Dr. Gordon asserted that "It (the penalty mechanism) is to make sure there is sufficient incentive for the company to maintain a defined level of service quality .... It's important to add that that's the only function of it, to maintain it. It isn't to force it to still higher and higher levels of service quality, because that would result in a lowering of the price to levels below what is allowed explicitly." See October 3, 2001 transcript of Dr. Kenneth Gordon, D.T.E. 01-56, p. 126. As noted above, fundamental changes in one component of a PBR Plan may constitute an inappropriate "recontracting," or a unilateral decision by a stakeholder or regulator to no longer honor the fundamental terms of a PBR Plan. Such changes not only weaken the incentives of such plans, they also may ultimately result in proceedings to seek appropriate corresponding plan adjustments thereby diminishing any administrative benefits of PBR.

With regard to the second part of the Department's question, the Company submits that multiple calls regarding a single gas leak should be considered as a single odor call response. In fact, Berkshire generally treats multiple calls regarding a single gas leak as a single odor call response, to the extent that it is able to determine (at the time of the incident or through later

review) that the succession of calls incoming to the company are stemming from the same location. Berkshire understands that this practice is consistent with that of other LDC's. There may be limited instances where multiple calls regarding a single gas leak may be tracked as a separate work order when an odor call is received at an address that cannot be correlated to the address of an existing odor call work order. These instances are rare and Berkshire makes all reasonable efforts to avoid double counting group calls for a single leak report. Accordingly, the Company submits that no change to the Guidelines on this measure is warranted, necessary or appropriate.

3. **Staffing Levels:** *G.L. c. 164, § 1E (a) requires the Department to establish benchmarks for staff and employee levels of LDCs, and G.L. c.164, § 1E (b) requires that no company may reduce its staffing levels below what they were on November 1, 1997. However, the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; and whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement. Further, the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. Please discuss the role of staffing levels in the future Guidelines.*

The Company submits that the term “staffing levels” applies solely to union employees of a regulated utility as of the date of the company's filing of a performance-based rate plan.

Section 1E (b) of the statute states that:

- (b) In complying with the service quality standards and employee benchmarks established pursuant to this section, a distribution, transmission, or gas company that makes a performance based rate filing after the effective date of this act shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997, unless such are part of a **collective bargaining agreement** or agreements between such company and the **applicable organization or organizations representing such workers**, or with the approval of the Department following an evidentiary hearing at which the burden is on the company to demonstrate that such staffing reductions shall not adversely disrupt service quality standards as established by the Department herein. Nothing in this paragraph shall prevent reduction of forces below the November 1, 1997 level through early retirement and severances negotiated with **labor organizations** before said date.

G.L. c. 164, § 1E (emphasis added). With regard to the language in the statute, the Company maintains that the terms “collective bargaining agreements” and “labor organizations”

necessarily imply that these mandates apply to solely union personnel. In addition, in the Interim Order the Department ruled that “consistent with the statute, collective bargaining agreements that are reached on an individual utility basis will be the primary determinant of staffing levels for the purpose of determining compliance with the statute. Therefore, those in-force collective bargaining agreements will determine staffing levels for Companies on a case-by-case basis.” August 29<sup>th</sup> Order, at 15.<sup>7</sup>

With regard to the second part of the Department's question relating to the applicability of Section 1B to employees of non-regulated subsidiaries, the Company submits that staffing levels should not include employees of non-regulated subsidiaries or divisions of the LDCs. Well established Department precedent provides that in organizations where employees perform both regulated utility and non-utility functions, only the portion of such salary and benefit costs attributable to the regulated utility functions are allowed to be recovered in the utility's rates. In establishing the “cast-off” rates reflected in the Company's initial PCM filing, 17.78 percent of compensation expense was attributable to non-regulated operations. The Berkshire Gas Company, D.T.E. 01-56, at 63-64 (2002).<sup>8</sup> Appropriately, these costs are not included in the Company's distribution rates. In fact, the Department set cast off rates for Berkshire assuming that the costs of 59.09 certain employees should be reflected in rates. A comparable calculation as of November 1997 suggests that 59.51 union employees were devoted to the utility function.<sup>9</sup> At present the Company maintains 65 union employees that devote essentially all of their time to utility services and, therefore, remains in full compliance with this

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<sup>7</sup> As a practical matter, management employee functions may be more suitable to be performed by affiliated services companies. In its rate case, Berkshire presented evidence of savings opportunities available through this type of initiative.

<sup>8</sup> Berkshire typically performed its non-regulated operations within “divisions” of the Company. After the establishment of a holding company structure, described below, these operations were transferred to distinct, separate corporate entities.

<sup>9</sup> These allocations were developed because the Company's employees, at times, performed both utility and non-utility functions. The non-utility functions performed by employees were allocated based on time sheet charges and were for below the line activities including servicing customer-owned gas equipment, servicing rental equipment, and supporting propane. As of 2003, the Company essentially no longer performs non-utility functions.

benchmark.<sup>10</sup> It should be noted that any change to this policy would necessitate a substantial adjustment to the Company's rates. In sum, the Department's well-established practices for allocating employees to the utility function for ratemaking purposes have been applied appropriately. The Company has fully complied with the staffing level benchmark for union employees and has secured Department approval for employee reorganizations when appropriate. The Department should maintain its established practices with respect to the staffing benchmark.

With regard to the third part of the Department's question as to the effective date of the staffing requirement, the Company submits that the effective date of the staffing level requirement is, at the earliest, the date the company files a performance-based rate plan. In a Letter Order in D.T.E. 99-84 dated May 28, 2002 (re: Bay State Gas Company), the Department found that

G.L. c. 164, § 1E mandates that the present staffing levels of a distribution company be tied to the company's November 1, 1997 levels only for a company that operates under a performance-based rate plan.... The Department recognizes that Bay State is not operating under a PBR at this time.... Therefore we also agree with Bay State that it is not required under G.L. c. 164, § 1E to submit an SQ plan with staffing level benchmarks based on the staffing levels in existence on November 1, 1997.

See May 28, 2002 Letter Order in D.T.E. 99-84 re: Bay State Gas Company. The Company filed its initial performance-based rate plan on July 17, 2001 and received approval on January 31, 2002. The Company maintains that the July 17th date is the earliest date that the staffing level requirement is applicable. As noted, current staffing levels for union employees exceed

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<sup>10</sup> The Company notes that prior changes with respect to its valued union employees were at all times made in a manner that is consistent with applicable collective bargaining agreements. In addition, the Company has sought and secured Department approval for a reorganization plan that resulted in the establishment of a holding company structure as well as the transfer of the Company's former retail propane and energy marketing activities to new affiliated entities. See The Berkshire Gas Company, D.T.E. 98-61/87 (1998). Thus, the Company satisfied the requirements of Section 1E with respect to these employee transfers by securing Department approval or making such changes consistent with the relevant collective bargaining agreement.

those in effect at the time of filing the PBR rate plan and at November 1997. Thus, Berkshire has remained in full compliance with this requirement.<sup>11</sup>

Finally, with regard to the Department's last question as to the appropriateness of penalties, the Company submits that while the statute does not contain specific language regarding penalties for falling below the staffing levels benchmark, there is no need for the Department to include explicit penalty provisions for this mandate in future Guidelines. Under the Department's existing framework, the focus is appropriately placed on the level of service currently provided by utilities and the comparison of those levels to performance benchmarks based on the utility's own historical service data. Accordingly, the Department has reasonably and effectively incorporated the statutory mandate regarding staffing level benchmarks into the Guidelines. Berkshire maintains that penalty provisions are inherent in the existing Guidelines since utilities incur penalties if staffing reductions cause the level of service provided by the utility to fall below historical levels. Accordingly, the Company submits that there should be no penalty provisions with regard to staffing level benchmarks in future Guidelines.

4. **Standardization of SQ Performance Benchmarks:** *In D.T.E. 99-84, at 3-4, the Department required that LDCs collect any data that may be necessary for the Department to revisit, in the future, the issue of using benchmarks based on nationwide, regionwide, or statewide data. The LDCs sent the Department a report on December 19, 2002 concluding that using the historical performance of each LDC on the respective performance measures remains the best method for establishing performance benchmarks. Summary of Findings Related To Service Quality Benchmarking Efforts, Navigant Consulting, Inc. (December 19, 2002). Please comment.*

The Company submits that using the historical performance of each LDC on the respective performance measures remains the best method for establishing performance benchmarks and should be maintained in future Guidelines. In the *Summary of Findings Related To Service Quality Benchmarking Efforts* (Navigant Consulting, Inc.), filed with the Department on December 19, 2002 (the "Benchmarking Report"), the LDCs provided the

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<sup>11</sup> Berkshire notes that the standard for these dates (1997 or 2001) is essentially identical, at least for Berkshire. Thus, while other LDC's may benefit from some clarification of this standard, Berkshire understands and remains in compliance with its obligations.

Department with a comprehensive evaluation of the potential for using national, regional or statewide data to establish uniform or comparative performance benchmarks across the utilities serving customers in the Commonwealth. Benchmarking Report at 1-2. In the Benchmarking Report, the distribution companies detailed their efforts to review information from other state jurisdictions, federal agencies,<sup>12</sup> industry associations<sup>13</sup> and commercial data resources in order to determine whether there was any basis to establish performance benchmarks on something other than historical company-specific performance data. Id. at 3-4, 7-12. The Benchmarking Report concluded that there are significant limitations in terms of the validity and applicability of using national, regional and statewide data to establish uniform or comparative performance benchmarks. Id. at 13-14, 16-22, 23-24.

Specifically, the Benchmarking Report concluded that there are inherent differences among utilities in terms of data-collection methods, data quality, geography, distribution system design and configuration and weather impacts that make it virtually impossible to establish standardized performance benchmarks that would have validity in terms of measuring (and penalizing) the performance of a specific Massachusetts-based utility. Benchmarking Report at 13, 16-23. These differences are significant because it is not possible to make comparisons among utilities if, for example, they are not computing the performance statistics in the same way or are not operating under the same economic, business and natural environments. Id. at 16. Similarly, a uniform benchmark is not appropriate where utilities are faced with differing operational, demographic and geographic challenges. Id. at 16-23. Thus, it may not be practicable or possible to identify the appropriate standard or to develop any meaningful performance measure for a single LDC.

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<sup>12</sup> Federal agencies included the Department of Energy, the Department of Labor, the Federal Energy Regulatory Commission, and the Occupational Safety and Health Administration.

<sup>13</sup> Industry associations included Electric Edison Institute, the Institute of Electrical and Electronics Engineers, the American Gas Association, the National Regulatory Research Institute and the National Association of Regulatory Utility Commissioners.

Berkshire submits that none of these considerations have changed in the three years since the Department's ruling in D.T.E. 99-84. Although the Department and various industry groups have made progress in terms of the standardization of performance measures through the adoption of common definitions and data-collection practices, nothing has occurred since the filing of the Benchmarking Report to change the fact that the only feasible and analytically sound approach to evaluating a utility's performance is to compare its current performance to its past performance, as demonstrated in the Benchmarking Report. Again, the fundamental stated purpose of the SQ Guidelines was to identify and penalize LDC's for any degradation in service while operating under PBR plans. The application of broader or more generic standards has no relation to this purpose. Indeed, such application could constitute the type of fundamental change or "recontracting" that Dr. Gordon warned about in his testimony in the Company's PBR rate proceeding. Further, such a change could result in a fundamentally inappropriate alteration of the balance struck in the Company's PCM Plan. Accordingly, the Company submits that using the historical performance of each LDC on the respective performance measures remains the most appropriate for establishing performance benchmarks consistent with the previously established goals of the SQ Guidelines and should be maintained in future Guidelines established by the Department.

5. **SQ Incentives:** *Please comment as to whether any LDC should be allowed to collect incentives for SQ performance. MECo and Nantucket Electric Company (collectively "MECo"), are allowed to collect incentives back from ratepayers if it exceeds its benchmarks in the penalty provisions. The Department approved incentives as part of MECo's SQ plan because MECo's prior SQ plan, pursuant to Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 13, 31-32 (2000), contained penalty/reward structures, and in consideration of the potential benefits to ratepayers. D.T.E. 01-71B at 24 (2001).*

The Company submits that the Department should not include incentives for SQ performance in Guidelines that apply to Berkshire, at least for the duration of its approved PCM Plan. The fact that in Massachusetts Electric Company, D.T.E. 01-71B (2002), the Department approved a rate plan that included an SQ component that provided for the payment of financial

incentives under certain circumstances is irrelevant to Berkshire. D.T.E. 01-71B, at 22.<sup>14</sup> In doing so, the Department noted that the financial incentive would provide the opportunity for the utility to “recover some of its costs” and, as a result, would encourage the company to make investments designed to improve service quality over time. Id. Presumably, all other features of Massachusetts Electric’s rate plan were structured and balanced in full consideration of the potential risks and benefits of the established SQ feature. As noted, Berkshire’s PCM Plan which involved price cap regulation, including the consumer dividend, featured an SQ component that focused on avoiding a degradation from established service levels. Berkshire does not believe that fundamental revisions to the approved PCM Plan or the kind of “recontracting” that Dr. Gordon warned about are appropriate regardless of the beneficiary of such change.

As a general matter, Berkshire recognizes that incentive opportunities can be a powerful tool and would evaluate and consider such an SQ structure in its next rate plan. Berkshire strongly believes that incentives should not be employed as a vehicle for cost recovery but, rather, only to provide a reward for exceptional performance. Again, these types of tools should be considered when the overall terms for a rate plan are being established.

Accordingly, for all of the reasons given above, the Company submits that the Guidelines established by the Department for the PCM Plan should be maintained, in the case of Berkshire, for the duration of such plan.<sup>15</sup>

6. **Customer Service Guarantees:** *LDCs are currently required to pay \$25.00 to any customer if they fail to meet a scheduled service appointment or fail to notify a customer of a scheduled outage. D.T.E. 99-84, at 38. Please discuss whether the future Guidelines should require (a) payment to customers whether or not the customer requests the credit; and (b) classification as a missed service appointment if the LDC*

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<sup>14</sup> The Department has recognized the differences between Mass Electric’s rate plan by not applying the same standard for exogenous costs. The Berkshire Gas Company, D.T.E. 04-52, pp. 11-12 (2004). The Department noted that Massachusetts Electric’s rate plan was fundamentally different as it did not involve the “price cap form of regulation” that is a central feature of Berkshire’s PCM Plan. Id. at 12, n.7.

<sup>15</sup> Berkshire takes no position on the merits of whether SQ incentive opportunities are appropriate for inclusion in the rate plans of other utilities or in new rate plans filed with the Department.

*contacts the customer within four hours of the missed appointment and re-schedules the appointment.*

The Company submits that the payment of the \$25.00 customer guarantee should be maintained in future guidelines regardless of whether or not the customer requests such credit. Berkshire currently makes payment of the \$25.00 customer guarantee for missed appointments and planned outages whether or not the customer requests the credit. Accordingly, the Company has no objection to a requirement in future Guidelines.

With regard to the second part of the Department's question relating to rescheduled appointments, the Company submits that the Department should not require classification of a "missed" service appointment in instances where the distribution company has contacted the customer and appropriately rescheduled the appointment. Berkshire maintains that there are several layers of complexity with regard to its scheduling activities; the fact that an appointment may need to be rescheduled does not necessarily mean that the Company has fallen short in its commitment, but, perhaps, that field personnel were temporarily and unexpectedly diverted to deal with other legitimate service needs in the field. The day-to-day scheduling of customer appointments is complex and requires the Company to maintain a level of flexibility to manage its operations. Routine service appointments may be scheduled days or weeks in advance of the date of the appointment. However, on the actual day of the appointment an unforeseen emergency (such as an odor call) may cause the service technician to be rerouted from his previously scheduled tasks. Such a delay may hinder the service technician's ability to perform the remaining scheduled service appointments. In this case, the Company may properly call those remaining customers to reschedule. The important feature is that the customer would have received timely advice of the need to change the appointment.<sup>16</sup> In any event, the Company should not be required to count the appointments where reasonable and timely

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<sup>16</sup> The Department should be mindful that customers also routinely seek to reschedule service appointments. When customers seek rescheduling for their convenience, no charge is assessed even though real costs may be incurred by the Company. The Guidelines should provide flexibility for reasonable accommodation in terms of scheduling without risk of an inappropriate penalty.

rescheduling efforts were completed since there was not a decline in service. Accordingly, the Company respectfully submits that the Department should not classify rescheduled appointments as “missed appointments” in future Guidelines.

7. **Property Damage:** *The Department established a reporting requirement regarding losses related to damage of company-owned property as it was likely to contribute to assessing company safety performance. D.T.E. 99-84, at 17. Please discuss whether this reporting requirement should be made a penalty measure in the future Guidelines.*

The Company submits that the current requirement to report information regarding damage to company property should not be made a penalty measure in future SQ Guidelines. Currently, gas companies report property-damage incidents involving damage to Company-owned facilities exceeding \$5,000 per incident because the Department has determined that this information will assist in its review of service-quality performance.

Berkshire maintains that damage to company property is not necessarily indicative of a service-quality problem. Damage may occur as a result of a number of circumstances both within and outside of the control of the Company; in many circumstances, there is no direct link between the company's service-quality performance and the damage caused to company property. For example, contractors performing installations (or repairs) of other underground utilities could accidentally cause damage to Company property. This “event” would be completely beyond the control of the Company and would have no correlation to service quality. Thus, any added penalty might result in inappropriate double counting. Finally, as noted above, the Department has stated that service-quality measures first and foremost were “designed to prevent deterioration of the service quality ratepayers are entitled to receive.” Interim Order, at 43. Berkshire's PCM Plan was adopted based upon a specified and established range of SQ measures. Unless and until the Department is willing and able to revisit the entire PCM Plan, the Company maintains that the Department should not include damage to company property as a penalty measure in future Guidelines.

## **V. CONCLUSION**

Berkshire submits that the established SQ Guidelines have worked effectively and as an integral feature of the Company's PCM Plan. Berkshire actively manages its performance pursuant to these SQ benchmarks. Berkshire has worked aggressively to maintain and, indeed, enhance the quality of its service within the structure of its established PBR rate plan. Berkshire opposes any significant changes to the SQ Guidelines to the extent applied to Berkshire during the remaining term of the Company's PCM Rate Plan. Berkshire's willingness and ability to commit to a lengthy rate freeze or an aggressive consumer dividend within the PCM Plan were dependent upon an understanding that the fundamental terms of such plan would be honored by stakeholders and regulators. Simply put, the PCM Plan was established based upon an established range of conditions. Any change to costs or burdens, including the SQ Guidelines, should be accompanied by commensurate changes in the Company's rate structure. Since such an adjustment might require substantial review, the administrative benefits and incentives of longer term PBR plans would be lost. Berkshire is proud of its performance in terms of the quality, reliability and safety of its services. Berkshire believes that the appropriate course is to extend the established SQ Guidelines, in the case of Berkshire, for a period commensurate with the PCM Plan.